

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EUGENE LUMLEY, Individually and on Behalf  
of All Other Persons Similarly Situated,

Plaintiff,

-against-

UNITED STATES TRUST COMPANY, N.A.,  
BANK OF AMERICA, N.A., JOHN DOES #1-  
10, Jointly and severally,

Defendants.

No. 08 CV 3993 (TPG) (AJP)

**DECLARATION OF JENNIFER  
BOUTHILLIER IN SUPPORT OF  
DEFENDANT'S OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
APPROVAL OF COLLECTIVE  
ACTION NOTICE**

I, Jennifer Bouthillier, declare as follows:

1. I have personal knowledge of the matters contained in this declaration, except where such facts are stated to be based on information and belief, and those facts I believe to be true. I make this declaration in support of Bank of America, National Association's opposition to Plaintiff Eugene Lumley's Motion for Approval of Collective Action Notice. If called to testify to the matters set forth in this declaration, I could do so competently.

2. I am currently a Portfolio Manager II at Bank of America, National Association ("Bank of America"). Prior to my employment with Bank of America, I was employed by the United States Trust Company, N.A. ("U.S. Trust") where I held the officer title of First Level Officer ("FLO"). I understand that the Plaintiff in this case is seeking to represent other current and former Bank of America and U.S. Trust employees, including me. I know that I would be eligible to participate as a member of the class if this case is certified as requested by Plaintiff Eugene Lumley. I understand that the lawyers who interviewed me and assisted in preparing this declaration for me represent Bank of America and do not represent my personal interests. I am making this statement voluntarily and without coercion.



3. I have been employed by U.S. Trust and Bank of America for four years. I was hired as a Trust Administrator and then was promoted to Trust Officer in or around 2006. Along with the promotion to Trust Officer, I was given an FLO officer title. I understand that U.S. Trust referred to my functional job title as "Senior Client Relationship Associate." Once we transitioned to Bank of America, my functional job title was changed to Portfolio Manager II and my officer level title was changed to "Officer."

4. I have a college degree and have worked in the finance industry since 1992. I am currently working on earning two accreditations – Certified Financial Planner and Certified Trust and Financial Advisor.

5. As part of the recent transition to Bank of America, there has been more of an emphasis on banking in my work. However, the day to day tasks described below have largely stayed the same.

6. As a Trust Officer and currently, I manage a number of client accounts. For the accounts where I am the sole investment advisor, I decide the asset allocation based on the client's objectives and try to diversify the stocks to ensure that the account is well-balanced and will net the most gains for the client. A number of accounts have inherited stocks, so I often suggest changes to the portfolio to ensure that the account is properly diversified. To make my suggestions, I often participate on conference calls to hear the bank's recommendations on various stocks and review the accounts to determine the appropriate allocation and good buys for the clients. I also assist a Portfolio Manager on accounts where she is the investment advisor and perform duties similar to what I do on my own accounts.

7. Every day is different for me depending on what the client needs. I have a lot of client contact, particularly when the clients need to take money from their accounts. In those situations, I check the account type and analyze the accounts and the available funds and tax implications, among other factors, to determine whether the client is entitled to receive the money he or she is asking for and whether it is advisable to withdraw money from the account. I have a lot of discretion in this process; if I have questions, I will consult with the Portfolio



Manager, but otherwise I will handle them on my own.

8. Many of the issues I need to resolve relate to what a client could or could not do with regard to the terms of the trust, so I spend a lot of time analyzing the trust documents. For instance, if a trust contains a real estate asset, the client might call me to ask what he or she is required to do legally in terms of upkeep on the property given that it is an asset of the trust. I would then advise them.

9. If the client wants a discretionary payment, I read the trust document and analyze it to determine if the request can be granted under the terms of the document, such as whether the trust allows for access to money or if there are restrictions on how the money can be spent. Based on my analysis of the trust document, I will grant the request or, if otherwise required, will submit a proposal to the Trust Administration Committee regarding the request.

10. While I interact regularly with my direct reporting supervisor, the Portfolio Manager Team Leader, she does not assign me work and does not work directly with the accounts. Nor does she supervise my daily work.

11. I work closely with the Portfolio Manager whom I assist with accounts. We are a team with regard to those accounts and both of us need to be informed about each client's needs and concerns. However, even with regard to the accounts managed primarily by the Portfolio Manager, she trusts me to make decisions for her when she is unavailable. And, for the accounts where I am the sole investment advisor, I make the material decisions myself.

I declare under penalty of perjury under that the foregoing is true and correct.

Executed at Osterville, Massachusetts, on August 12, 2008.

  
Jennifer Bouthillier